



TITLE 9. CALIFORNIA DEPARTMENT OF MENTAL HEALTH

ACTION: NOTICE OF EMERGENCY RULEMAKING

**SUBJECT: MENTAL HEALTH PLAN PAYMENT AUTHORIZATION, CLAIMS
CERTIFICATION AND PROGRAM INTEGRITY, DMH 0403**

PUBLIC PROCEEDINGS: Notice is hereby given that the California Department of Mental Health (DMH) proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed regulatory action.

WRITTEN COMMENT PERIOD: Any interested person, or their authorized representative, may submit comments relevant to the action described in this notice. Any written statements, arguments, or contentions must be received by the Office of Regulations, California Department of Mental Health, 1600 Ninth Street, Room 150, Sacramento, CA 95814, by 5:00 p.m. on **August 11, 2003**. It is requested but not required that written statements sent by mail or hand-delivered be submitted in triplicate.

Comments may be transmitted via facsimile 916-654-2440 or electronic mail regs@dmhhq.state.ca.us and must be received before 5:00 p.m. on the last day of the public comment period. All comments, including electronic mail or facsimile transmissions, should include the author's name and U.S. Postal Service mailing address in order for DMH to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited.

PUBLIC HEARING: DMH will hold a public hearing commencing at 1:30 p.m. on August 11, 2003, in the Auditorium at 744 P Street, Sacramento, CA. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest/Policy Statement Overview. DMH requests, but does not require, that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

Reasonable accommodation or sign language interpreting services at a public hearing will be provided upon request. Such request should be made no later than 15 days prior to the close of the written comment period.

WEB SITE: This public notice, the regulation text, the initial statement of reasons, and other related documents, are available from the DMH world wide web site <http://www.dmh.cahwnet.gov/regulation/rulemaking.htm>.

CONTACT: Inquiries concerning the rulemaking process described in this notice may be directed to Steve Appel, Chief, Office of Regulations, by electronic mail regs@dmhhq.state.ca.us or telephone 916-654-4027. The backup contact person is William A. Avritt, Acting Deputy Director, Administrative Services, at 916-654-2378. Inquiries concerning the substance of the rulemaking may be directed to Rita McCabe-Hax, Chief, Managed Care Implementation, DMH, at 916-651-9370.

Hearing impaired persons wishing to utilize the California Relay Service may do so at no cost. The telephone numbers for accessing this service are: 800-735-2929, if you have a TDD; or 800-735-2922, if you do not have a TDD.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW: California's Medi-Cal mental health managed care program operates under Social Security Act, Section 1915(b) waivers that DMH administers under an interagency agreement with the Department of Health Services (DHS), California's single state Medicaid agency. The program provides specialty mental health services to Medi-Cal beneficiaries through contracts between DMH and mental health plans (MHPs) in each county.

DHS, as the single state agency under federal medicaid law, has the responsibility and authority for administering the Medi-Cal program, including the supervision and oversight of other entities providing Medi-Cal services. Federal law at Title 42, United States Code, Section 1396a(a)(11) requires that a State medicaid plan must "provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services . . . looking toward maximum utilization of such services in the provision of medical assistance under the plan." This federal law conveys authority for the interagency agreement between DHS, the single state medicaid agency, and DMH whereby DMH agrees to provide administration and oversight of MHP contracts and the provision of medically necessary specialty mental health services to Medi-Cal beneficiaries in accordance with California's state medicaid plan and approved federal waivers.

As set forth in the interagency agreement between DHS and DMH and described in California's Social Security Act Section 1915(b) Medi-Cal managed mental health care waiver programs approved by the federal Centers for Medicare and Medicaid Services, DMH is responsible for the development and implementation of the Medi-Cal managed mental health care program, subject to DHS review, approval and administrative discretion, and to the extent authorized by and consistent with federal and state laws and regulations, including Title 42, United States Code, Section 1396a(a)(5) and (11) and Title 42, Code of Federal Regulations, Section 431.10.

Title 9, Division 1, Chapter 11, Section 1810.100 et seq., of the California Code of Regulations (CCR) implements, interprets and makes specific the requirements brought about by the changes in the law (Welfare and Institutions Code, Sections 5775 et seq. and 14680 et seq.) for operation of the Medi-Cal managed mental health care program.

Section 1830.215 sets standards for payment authorization systems that MHPs establish for the review of the medical necessity of specified specialty mental health services that providers are or intend to provide to Medi-Cal beneficiaries. The current rule allows the MHPs to determine the services for which they will require payment authorization. DMH proposes amendments to Section 1830.215 to implement the requirements of Welfare and Institutions Code, Sections 14043 et seq., regarding prevention of fraud and abuse in the Medi-Cal program, and the requirements of Welfare and Institutions Code, Section 5767, regarding effective management of the Medi-Cal Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit by MHPs. The amendment will require MHPs to make decisions on provider requests for payment authorization for day treatment intensive, day rehabilitation and EPSDT supplemental specialty mental health services in accordance with the terms of the contract between the MHP and the department, rather than allow MHPs the option to rely on the provider's determination of medical necessity.

DMH proposes to adopt Section 1840.112 to implement the requirements of Welfare and Institutions Code, Sections 14043 et seq. to prevent potential fraud and abuse in the delivery of Medi-Cal specialty mental health services by requiring that MHPs certify that the Medi-Cal specialty mental health services included in each claim for federal financial participation were provided in accordance with specified statutory, regulatory and contractual requirements.

AUTHORITY: Sections 5775, 14043.75, and 14680 of the Welfare and Institutions Code.

REFERENCE: Sections 5718, 5719, 5724, 5767, 5776, 5777, 5778, and 14684 of the Welfare and Institutions Code; and Sections 433.51, 438.210, 438.604, 438.606, 438.608, and 455.18 of Title 42, Code of Federal Regulations.

PRE-NOTICE PUBLIC DISCUSSIONS:

The following identified agencies, advisory groups, or other bodies were asked to review and comment on the changes in authorization requirements for day treatment intensive and day rehabilitation and/or therapeutic behavioral services (currently the only EPSDT supplemental specialty mental health service) that are proposed for immediate implementation based on this regulation change:

California Alliance of Children and Family Services
California Coalition of Community Mental Health Agencies
California Department of Health Services
California Department of Social Services
California Mental Health Directors Association

FISCAL IMPACT ESTIMATE:

- A. Fiscal Effect on Local Government:** The regulation changes may require additional administrative costs for some MHPs and are expected to produce savings in the total costs of services. The estimated additional administrative costs are \$468,000 annually. The estimated savings in Fiscal Year 2003-04 are \$762,000.
- B. Fiscal Effect on State Government:** The regulation changes are expected to produce savings to the State General Fund for the costs of EPSDT supplemental specialty mental health services and costs related to increased payments to MHPs for program integrity requirements. The estimated additional cost for Fiscal Year 2003-04 is \$1,114,000. The estimated savings in Fiscal Year 2003-04 are \$6,862,000.
- C. Fiscal Effect on Federal Funding of State Programs:** The regulation changes are expected to produce savings in the total costs of services, including related reductions in federal funds. Additional federal funding will be available for the additional administrative costs. The estimated additional administrative funding will be \$2,145,000 in Fiscal Year 2003-04. The estimated savings in Fiscal Year 2003-04 are \$7,624,000.
- D. Fiscal Effect on Private Persons or Businesses Directly Affected:** No private persons or businesses are directly affected by this regulation package. DMH is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the emergency action. Only counties serving as MHPs are directly affected.

DETERMINATIONS: DMH has determined that this regulation would not impose a mandate on local agencies or school districts, nor are there any costs which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

DMH has determined that this regulation would not impose other non-discretionary cost or savings on local agencies.

DMH has determined that this regulation would not have a significant effect on housing costs.

DMH has determined that this regulation would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

DMH has determined that this regulation would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.

DMH has determined that these regulations will not directly affect small businesses. These regulations only have a direct affect on counties, which are the entities who serve as Medi-Cal Mental Health Plans. These regulations may indirectly change how specialty mental health care providers will do business with the Medi-Cal program, depending on decisions of the providers and the entities contracting with the Department of Mental Health under the authority of these regulations.

AVAILABILITY OF STATEMENT OF REASONS AND REGULATION TEXT: DMH has prepared and has available for public review an initial statement of reasons for this regulation, all the information upon which this regulation is based, and the text of this regulation. These documents are posted on the DMH web site. A copy of the initial statement of reasons and the text of this regulation is available upon request to the Office of Regulations at the address noted above. This address will be the location of public records, including reports, documentation, and other material related to this regulation. In addition, when completed, the final statement of reasons will be available.

AVAILABILITY OF THE CHANGED OR MODIFIED REGULATION TEXT:

After considering all timely and relevant comments received, DMH may adopt this regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which DMH adopts this regulation. Any modifications will also be posted on the DMH web site. Requests for copies of any modified regulation should be directed to Steve Appel, Office of Regulations, at the address indicated above.

CONSIDERATION OF ALTERNATIVES: In accordance with Government Code Section 11346.5(a)(13), DMH must determine that no reasonable alternative considered by DMH or that has otherwise been identified or brought to its attention would be more effective in carrying out the purpose for which the action was taken or would be as effective and less burdensome to affected private persons than this action.

DMH considered the alternative of assuming the responsibility for payment authorization of specific services covered by the MHPs. DMH determined that this would not be feasible in light of the new requirement of Welfare and Institutions Code, Section 5767, that DMH work with a statewide organization representing county mental health services (DMH worked with the California Mental Health Directors Association) to build on existing systems to apply managed care principles to the Medi-Cal EPSDT benefit covered by the MHPs to ensure management of the program while ensuring access to Medi-Cal beneficiaries. DMH was required by the statute to take some action that built on current MHP systems. Establishing an authorization function at DMH would have undermined existing MHP systems and required the development and staffing of a new function at DMH. There would have been no benefit to providers or beneficiaries under this alternative. Administrative costs would have shifted from MHPs and the federal government to DMH and the federal government.

DMH did not find any alternatives to the MHP claims certification and program integrity requirements. Federal regulations require that the MHPs must be the entities that certify claims to the State and that ensure that proper systems are in place to prevent fraud and abuse. DMH responsibilities in these areas cannot relieve the MHPs of their responsibilities.